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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1204

LEON MADOLE,
Petitioner,

VERSUS

STATE OF OKLAHOMA, EX REL. DEPARTMENT OF HIGHWAYS OF THE STATE OF OKLAHOMA,
Respondent.

PETITION FOR REHEARING

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April, 1970

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. CE 5-0030

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JURISDICTION

The jurisdiction of this Court has already been invoked under 28 U.S.C. Section 1257 (3). Petitioner now prays for rehearing after certiorari denied under Rule 58.

INTERVENING FACTS

Shortly after Petition for Certiorari was filed herein, there was a great commotion in the Legislature regarding notice and House Bill 1676 was introduced in the Legislature of Oklahoma and passed by the House, the purpose of which was to make a condemnation procedure in Oklahoma conform to minimal due process of requirements of the 14th Amendment of the Constitution of the United States. But respondent, the Department of Highways of the State of Oklahoma, made numerous appearances before the

Senate Judiciary Committee in an effort to emasculate what a conscious stricken Legislature had proposed.

Now, with certiorari denied, the Bill has been returned to the committee where it will languish and die when the Legislature adjourns this week.

ARGUMENT

In its brief, the respondent shows the Court its new notice form, respondent's "Exhibit B" in its Appendix. It trys to show this Court that it has cured the ill complained of and that it acts in good faith, but the behavior of the Highway Department before the Legislature of Oklahoma clearly shows its lack of good faith and its intention of proceeding much as it has in the past with clear disregard of the due process provisions of the 14th Amendment. It thereby assures the recurrence of the problem we sought to cure. We urge this Court to settle that problem now.

This Court has never decided what minimum information notice must contain to satisfy due process. Seldom will a case be so beautifully formed on this one issue. No other issue is presented or involved. Petitioner's only pleading in the District Court is his motion to vacate the judgment for the reason that the court was without jurisdiction since the notice given did not measure up to the due process requirements of the 14th Amendment. All subsequent proceedings are based on review of the trial court's informed sustainment of that motion. Here is a constitutional question desperately in need of decision, standing isolated from all other questions, both state and Federal. Since the filing of this Petition, the Department of Highways has shown its

basic underlying lack of good faith by actively and successfully lobbying against a Bill designed to insure proper notice to landowners.

In the meantime, bulldozers are piling dirt for a highway interchange thirty (30) feet deep over the land that grew petitioner's alfalfa not long ago. Petitioner is a citizen of Oklahoma and of the United States. As a person he is a farmer, of little education; who has worked his whole life to acquire what little farm land he has. Land has been taken from him by a perverted use of the Court's process. The respondent's repeated assertions at every level of litigation that this petitioner has conceded oral conversations and correspondence are utterly untrue. Petitioner has insisted throughout that the procedures were never explained to him, that he was never informed that he had been sued and that he had no opportunity to be heard. Respondent misleads this Court in stating such "uncontroverted facts." Petitioner concedes only the receipt of the written notice personally served upon him.

Petitioner begs this Court to hear his case and to direct the Supreme Court of Oklahoma to so order process in that state that neither the Highway Department nor the railroads nor any other utility nor any branch or subdivision of the State Government shall ever again deprive any person of his property without informing him that he has been sued and affording him an opportunity to be heard. It is a good, sound, novel constitutional question which will occur again and again with increasing frequency unless this Court intervenes now in this case to enforce on behalf of the people the constitutional restraint on the condemning power of the State Government.

CONCLUSION

Because of the now demonstrated intention of the Department of Highways of the State of Oklahoma to persevere in the future as it has in the past in disregard of the landowner's right to notice sufficient under the due process clause of the 14th Amendment of the Constitution to the United States, this Court should grant a rehearing on the question of whether or not a Writ of Certiorari should issue to the Supreme Court of Oklahoma.

Respectfully submitted,

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Counsel for Petitioner

April, 1970

CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 (2).

Dated this 15th day of April, 1970.

JEROME E. HEMRY
Counsel for Petitioner